

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Hudson Cold Storage & Freezer Corp. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Fiscal Years Ended 7/31/78, 7/31/79, 7/31/80 :  
and 7/31/81. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

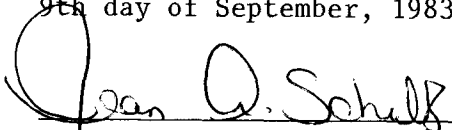
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of September, 1983, she served the within notice of Decision by certified mail upon Hudson Cold Storage & Freezer Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hudson Cold Storage & Freezer Corp.  
R.R. #1, Box 82A  
Hudson, NY 12534

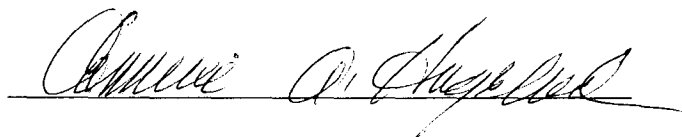
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
9th day of September, 1983.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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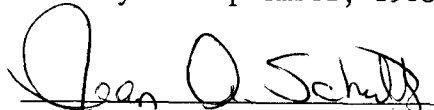
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of September, 1983, she served the within notice of Decision by certified mail upon Stephen L. Tarshis the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen L. Tarshis  
Rider, Drake, Sommers & Loeb  
P.O. Box 991  
Newburgh, NY 12550

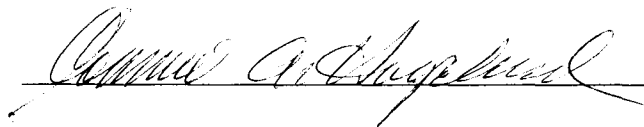
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
9th day of September, 1983.



ANTHONY J. SCHULTZ  
NOTARY PUBLIC  
STATE OF NEW YORK  
EXPIRES 12/31/84



STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

September 9, 1983

Hudson Cold Storage & Freezer Corp.  
R.R. #1, Box 82A  
Hudson, NY 12534

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Stephen L. Tarshis  
Rider, Drake, Sommers & Loeb  
P.O. Box 991  
Newburgh, NY 12550  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
HUDSON COLD STORAGE & FREEZER CORP.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal Years	:	
Ended July 31, 1978, July 31, 1979, July 31,	:	
1980 and July 31, 1981.	:	

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Petitioner, Hudson Cold Storage & Freezer Corp., R.R. 1, Box 82A, Hudson, New York 12534, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ended July 31, 1978, July 31, 1979, July 31, 1980 and July 31, 1981 (File Nos. 35227 and 38716).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on February 10, 1983 at 1:30 P.M. and continued at the same location on February 18, 1983 at 9:40 A.M., with all briefs to be submitted by May 20, 1983. Petitioner appeared by Rider, Drake, Sommers & Loeb, P.C. (Steven L. Tarshis, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Harry Kadish, Esq., of counsel). In addition, on March 14, 1983, petitioner, by Rider, Drake, Sommers & Loeb, P.C. (Steven L. Tarshis, Esq., of counsel) and the Audit Division by John P. Dunne, Esq. (Harry Kadish, Esq., of counsel) executed a stipulation which is incorporated into and made a part of this decision.

### ISSUES

I. Whether the storage of apples in controlled atmosphere rooms may be considered "processing" for purposes of determining whether petitioner was entitled to investment tax credits on the purchase of various equipment used in its business.

II. Whether all of the equipment on which petitioner claimed investment tax credits was used by petitioner for the storage of apples in controlled atmosphere rooms.

### FINDINGS OF FACT

1. On May 15, 1981, the Audit Division issued two statements of audit adjustment against petitioner, Hudson Cold Storage & Freezer Corp. One alleged a corporation franchise tax deficiency of \$500.40 plus interest for petitioner's fiscal year ended July 31, 1978 and provided the following explanation:

"An investment tax credit, computed in accordance with Section 210.12 of Article 9-A of the Tax Law, may be allowed on qualified property. In order to qualify for the credit, the property must be principally used in the production of goods by manufacturing. Accordingly, your investment tax credit has been disallowed."

The second alleged a corporation franchise tax deficiency of \$4,564.00 plus interest for petitioner's fiscal year ended July 31, 1979 and incorporated the explanation noted above.

2. On July 22, 1981, the Audit Division issued two notices of deficiency against petitioner. One alleged a corporation tax deficiency of \$500.40 plus interest for petitioner's fiscal year ended July 31, 1978. The second alleged a corporation tax deficiency of \$4,564.00 plus interest for petitioner's fiscal year ended July 31, 1979.

3. On February 26, 1982, the Audit Division issued two additional statements of audit adjustment against petitioner. One alleged a corporation franchise tax deficiency of \$1,857.88 plus interest for petitioner's fiscal year ended July 31, 1980. The second alleged a corporation franchise tax deficiency of \$682.00 plus interest for the fiscal year ended July 31, 1981 and provided the following explanation (which was incorporated into the Statement of Audit Adjustment for the period ended July 31, 1980):

"In order to qualify for the investment tax credit, the property must be principally used in the production of goods by manufacturing. Accordingly, your investment tax credit has been disallowed."

4. On May 7, 1982, the Audit Division issued two notices of deficiency against petitioner. One alleged a corporation tax deficiency of \$1,857.88 plus interest for the period ended July 31, 1980. The second alleged a corporation tax deficiency of \$682.00 plus interest for the period ended July 31, 1981.

5. Petitioner filed a Form CT-3, New York Corporation Franchise Tax Report, for each fiscal year at issue. It also filed a Form CT-46, Claim for Investment Tax Credit, for each year at issue and calculated its tax liability after claiming investment tax credits as follows:

<u>Fiscal Year Ended</u>	<u>Description of Property</u>	<u>Investment Tax Credit Claimed</u>
July 31, 1978	controlled atmosphere room	\$ 500.40
	1978 TOTAL	<u>\$ 500.40</u>
July 31, 1979	controlled atmosphere room	\$1,103.00
	controlled atmosphere room	667.00
	grader and bagger	2,108.00
	forklift	273.00
	manufacturing equipment	272.00
	manufacturing equipment	141.00
	1979 TOTAL	<u>\$4,564.00</u>

July 31, 1980	controlled atmosphere room	\$ 77.16
	additions	
	controlled atmosphere room	21.52
	additions	
	two conveyors	80.80
	bins	807.60
	rear grader conveyor	70.80
	electric forklift	500.00
	forklift	300.00
	1980 TOTAL	<u>\$1,857.88</u>
July 31, 1981	scale for packhouse	\$ 29.00
	flow scald applicator	631.00
	water controller	9.00
	blower fan	13.00
	1981 TOTAL	<u>\$ 682.00</u>

6. Petitioner is a New York corporation located in Hudson, New York which, according to the testimony of its president, Martin A. Michaelson, operates a "controlled atmosphere facility basically used for storing apples that are grown in Columbia County and a few of the other surrounding counties." It is a subsidiary of United Apple Sales, Inc. which markets most of the apples grown in Columbia County.

7. Apples are harvested during the late summer and early autumn and brought to petitioner's controlled atmosphere facility where they are dipped in a stop-scald solution which retards the apples from turning black. They are then placed in controlled atmosphere storage where the oxygen level is brought down from approximately twenty-one percent oxygen to three percent oxygen and the carbon dioxide level is increased from .05 percent to a range of from two and one-half percent to five percent depending on the variety of apple. The apples are stored for at least ninety days at the low oxygen, increased carbon dioxide level<sup>1</sup> which retards the apples from maturing.

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<sup>1</sup> The New York State Department of Agriculture and Markets has regulations governing the controlled atmosphere storage of apples. 1 NYCRR Part 187.

8. A controlled atmosphere storage room is completely filled with apples from the back of the room to the door with no aisle space left in the room. The room is then hermetically sealed and is not reentered for at least ninety days unless an emergency arises.

9. According to Mr. Michaelson, controlled atmosphere storage of apples extends the life of apples so they are marketable on a twelve month basis while "regular cold storage apples are only suitable for marketing maybe four or five months a year". In addition, "the apples will be kept crispier, firmer, more flavorful, sweeter, in a controlled atmosphere situation as against a regular cold storage situation."

10. According to Dr. George David Blanpied, a professor in the Department of Pomology (the science that deals with fruit and fruit growing) at The New York State College of Agriculture and Life Sciences at Cornell University, Ithaca, New York, the rate of respiration<sup>2</sup> and the rate of ripening may be retarded by lowering the temperature, lowering the amount of oxygen and increasing the amount of carbon dioxide around the fruit. The advantage of controlled atmosphere storage over cold storage is that all three ways of retarding ripening and respiration are combined in controlled atmosphere storage. According to Dr. Blanpied, apples in controlled atmosphere storage will tend to lose their acidity, and their starch will be converted into sugar.

11. All of the equipment for which petitioner claimed investment tax credits was depreciable pursuant to the I.R.C. §167, had useful lives of four years or more, was acquired by purchase as defined in I.R.C. §179(d) and was situated in New York State. Petitioner contends that all of the equipment was

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<sup>2</sup> Apples carry on a process called respiration even after they have been picked whereby fruit sugars are oxidized in the presence of oxygen in the air. Carbon dioxide, water vapor and heat are produced by the process.

used by it in the production of goods by processing, and therefore it is entitled to claim investment tax credits.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law §210.12(b), a corporation subject to taxation under Article 9-A of the Tax Law is entitled to an investment tax credit with respect to tangible personal property which is depreciable pursuant to I.R.C. §167, has a useful life of four years or longer, is acquired by purchase as defined in I.R.C. §179(d), has a situs in New York and is "principally used by the taxpayer in the production of goods by manufacturing, processing, assembling...". Pursuant to Finding of Fact "11", supra, in order to determine whether petitioner is entitled to investment tax credits on the purchase of various equipment, we must resolve whether such equipment was "principally used by the taxpayer in the production of goods by manufacturing, processing, assembling...".

B. That processing is an operation whereby raw material is subjected to some special treatment, by artificial or natural means, which transforms or alters its form, state or condition. Matter of Continental Terminals, Inc., State Tax Commission, March 5, 1982.

C. That the controlled atmosphere storage of apples does not constitute processing since the end result of controlled atmosphere storage is not a product so significantly different from the raw material that such storage may be deemed "processing". See Matter of J. H. Wattles, Inc., State Tax Commission, October 30, 1981.

D. That since we have determined that the controlled atmosphere storage of apples does not constitute processing, it is not necessary for us to decide whether all of the equipment on which petitioner claimed investment tax credits


was used by petitioner for the storage of apples in controlled atmosphere rooms.

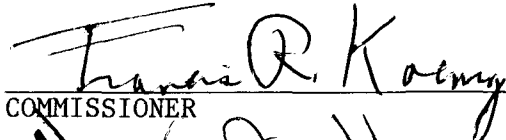
E. That the petition of Hudson Cold Storage and Freezer Corp. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 09 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER